IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 924 of 1999

in

SPECIAL CIVIL APPLICATIONNo 1564 of 1999

with

CIVIL APPLICATION NO. 6323 OF 1999

with

LETTERS PATENT APPEAL NO.46 OF 1995

in

SPECIAL CIVIL APPLICATION NO. 762 OF 1995

with

SPECIAL CIVIL APPLICATIONS No 1561, 1562 & 1563 of 1999

with

CIVIL APPLICATIONS NO. 2550, 2551 & 2552 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution : NO

of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TALUKA DEVELOPMENT OFFICER

Versus

SADAJI KUVARJI THAKORE

Appearance:

1. LETTERS PATENT APPEAL No. 924 of 1999
   MR SUNIL K SHAH for the Appellants
   MR PH PATHAK for the Respondent.
2. Special Civil Applications No. 1561, 1562 & 1563 of 1999
   MR SUNIL K SHAH for Appellant.
   MR PH PATHAK for Respondents

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE A.L.DAVE

Date of decision: 09/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. All these matters are disposed of by this common judgment and order, as common question involved in these matters.

2. The appellants of Letters Patent Appeal No.924 of 1999 are the orignal petitioners of Special Civil Application No.1564 of 1999. They approached this Court under Article 226 and 227 of the Constitution of India against the impugned judgment and award dated 15th December, 1998, passed by the Labour Court, Kalol, in Reference (LCK) No.319 of 1995, whereby the Labour Court declared the termination order of the respondent-workman illegal and directed the appellants-petitioners to take him back in service with full back wages. This award dated 15.12.1998, passed by the learned Presiding Officer of the Labour Court, Kalol, was challenged by the appellants-petitioners by way of Special Civil Application No.1564 of 1999. The learned Single Judge, by his order dated 3.5.1999 dismissed the said writ petition, as he was in complete agreement with the reasons assigned by the Labour Court while passing the award. It is clear from the order of the learned Single Judge that, he has has exercised his powers under Article

227 of the Constitution, though the petition was labelled as a petition under Articles 226 and 227 of the Constitution.

3. In view of the judgment of the Honourable Supreme Court in the case of Kanaiyalal Agrawal v. Factory Manager, Gwalior Sugar Company Ltd., (2001) 9 SCC 609, Letters Patent Appeal in such cases would not be maintainable. Therefore, only on this ground, the appeal deserves to be dismissed. However, by way of abundant caution, we have thought it fit to go into the merits of the case.

4. From the order dated 3rd May, 1999, passed by the learned Single Judge, dismissing Special Civil Application No.1564 of 1999, filed by the appellants-petitioners, it is clear that, on earlier occasion, when the appellants terminated the services of the respondent-workman, the said termination was challenged before the Labour Court and the Labour Court held that the termination was illegal and passed the award dated 27.1.1993. The said award of the Labour Court was challenged by way of Special Civil Application No.8404 to 8407 of 1993 before this Court. A Division Bench of this Court, by its order dated 24.8.1993, dismissed all those writ petitions and confirmed the judgment and award of the Labour Court. The order passed by the Division Bench of this Court was carried in appeal before the Honourable Supreme Court by way of Special Leave Petition by the appellants-petitioners. However, the Honourable Supreme Court, by order dated 19.11.1993, dismissed the S.L.P.

5. Once the appellants lost the matter upto the Honourable Supreme Court, then the appellants-petitioners had no objection to reinstate the respondent-workman and, accordingly, the workman was reinstated in service by an order dated 20th January, 1994. However, after passing the order of reinstatement, once again by order dated 3.1.1995, the appellants-petitioners terminated the services of the workman. This was challenged by the workman by way of a writ petition, i.e. Special Civil Application No.762 of 1995. Initially, the learned Single Judge of this Court granted interim relief against the termination. Against the interim relief, the appellants-petitioners filed Civil Application No.253 of 1995 for vacating the ex-parte ad-interim relief granted in favour of the workman. However, the learned Single Judge did not vacate the interim relief and fixed the petition for early hearing. Therefore, the appellants-petitioners filed Letters Patent Appeal No.46

of 1995 before the Division Bench of this Court, wherein the Division Bench of this Court granted stay against the order passed by the learned Single Judge, confirming the ad-interim stay.

6. In view of the above, the workman had withdrawn the main writ petition on 27.6.1995 and approached the Labour Court by way of Reference No.319 of 1995. The Labour Court, after hearing the parties, passed the award in favour of the respondent-workman and set aside ther termination of the respondent-workman.

7. Before the learned Single Judge, Shri Shah, learned counsel appearing for the appellants-petitioners submitted that the Labour Court had not considered the circular dated 3.11.1979 regarding the superannuation of Kotwal. The said contention of the learned counsel, Shri Shah, was rejected by the learned Single Judge by holding that such contention was contrary to his own stand taken up before the Labour Court. Before the Labour Court, the appellants-petitioners specifically contended that the respondent-workman was appointed after obtaining the approval of the State Government. This very contention is sought to be raised by the learned Counsel, Shri Shah, in this appeal.

8. Having carefully gone through the impugned award passed by the Labour Court and the order passed by the learned Single Judge, dismissing the writ petition of the appellants-petitioners, it is clear that a specific contention was raised before the Labour Court that the respondent-workman was appointed after obtaining the necessary permission from the Government. In that view of the matter, we are of the considered opinion that the learned Single Judge has rightly rejected the contention raised before him that without prior permission of the Government, the appointment of the respondent-workman was made.

9. At this stage, learned counsel, Shri Shah, for the petitioners in Special Civil Application No.1563 of 1999 pointed out that, during the pendency of this petition, the respondent-workman, Abhuji Chehraji Thakore, has already reached the age of superannuation and retired from service.

10. Before parting, we must state that the learned counsel, Shri Pathak, appearing for the respondent-workman specifically pointed out before us that the aforesaid contention raised by learned counsel, Shri Shah, was earlier raised by the appellants before

the Labour Court when they had terminated the services of the workman. At that time also, the Labour Court rejected the contention and passed the award in favour of the workman. Against that award, they approached the Division Bench of this Court by way of a writ petition, which was also dismissed. Against the award of the Labour Court and the order of the Division Bench , they approached the Honourable Supreme Court by way of S.L.P. and that S.L.P. was also rejected. Therefore, now, it is not open to the appellants-petitioners to raise that contention again and again before this Court that the appointment of the workman was not in accordance with law and that without permission of the Government, the workman was appointed. In support of his contention, learned counsel, Shri Pathak, has relied on the judgment of a Constitutional Bench of the Supreme Court in the case of Vithal Jeshwant Jathar v. Shikandarkhan Makhtumkhan Sardesai, reported in AIR 1963 SC 385, wherein the Honourable Supreme Court held that, where the final decision in any matter at issue between the parties is based by a Court on its decisions on more than one point, each of which by itself would be sufficient for the ultimate decision, the decision on each of these points operates as res judicata between the parties. Mr. Pathak rightly pointed out that the Labour Court has specifically held in its award that bar of res judicata will apply in this case on this point. We, therefore, accept the submission of Mr. Pathak on this point that again and again, the appellants-petitioners should not be allowed to raise this contention which is already rejected earlier by the Labour Court and confirmed right upto the Honourable Supreme Court.

11. In view of the above discussion, Letters Patent Appeal No.924 of 1999 is required to be dismissed and is, accordingly, dismissed.

12. Civil Application No.6323 of 1999 filed in Letters Patent Appeal No.924 of 1999 is dismissed in view of the dismissal of the Appeal. Interim relief granted in the Civil Application is vacated.

13 In view of the above order passed in Letters Patent Appeal No.924 of 1999, Letters Patent Appeal No.46 of 1995 stands dismissed.

14. So far as the writ petitions, i.e. Special Civil Applications No.1561, 1562 and 1563 of 1999 are concerned, they deserve to be dismissed in view of the dismissal of the Letters Patent Appeal. Accordingly, all these writ petitions are also dismissed. Rule is

discharged in all the writ petitions with no order as to costs. Interim relief granted in each of the petitions is vacated.

15. Civil Applications No.2550, 2551 and 2552 of 1999 are also dismissed in view of the dismissal of the above writ petitions.

[B.J. SHETHNA, J.]

[A. L. DAVE, J.]

gt